IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8187 OF 2004

Shri R.K.Bhoir and Anr. .. Petitioners

Versus

The State of Maharashtra

and Ors. .. Respondents

Mr.R.K.Mendadkar for petitioners

Mr.C.R.Sonawane, A.G.P. for respondents.

CORAM : A.P.SHAH AND

S.C.DHARMADHIKARI, JJ.

DATE : 24TH NOVEMBER 2004.

P.C.

. Rule. Mr.Sonawane, A.G.P. waives notice on behalf of respondent Nos. 1, 4 and 5. Notice to respondent No.3 dispensed with. By consent, rule made returnable forthwith. Heard parties.

2. By this petition under Article 226 of the Constitution of India, petitioners challenge the order dated 19th July 2004 (Exh.A) passed by the Scheduled Tribe Certificate Scrutiny Committee, Konkan division, Thane.

3. Petitioner No.1 applied to respondent No.2 committee through Education Officer, Mumbai Municipal Corporation whereas petitioner No.2 applied for verification of her claim towards Dongar Koli Scheduled Tribe for education purpose. Petitioners are related. Petitioner No.1 is the uncle of petitioner No.2.

4. It is the case of petitioners that they belong to Mahadeo Koli Tribe which is recognised as scheduled Tribe under Presidential notification issued under Article 342(1) of the Constitution of India. It is the case of petitioners that scheduled tribe Mahadeo Koli is also known as Dongar Koli. Petitioners are hailing from villege Fakirpada, Taluka Alibag, Dist.Raigad. It is one of the areas specified and notified by Government as being inhibited by

Mahadeo Koli tribals. It is the case of petitioners that father of petitioner No.1 and grand father of petitioner No.2 Krishna Vithoba Bhoir was born on 5th June 1916 and was admitted in Raigad Zilla Parishad Primary School at Zirad Taluka Alibag Dist.Raigad on 22nd June 1928 where his caste was recorded as Dongar Koli. Reliance is plaed by petitioners on primary school leaving certificate issued by Headmaster of the school in respect of grand father of petitioner No.1. One Gopal Shiva Bhoir brother of grand father of petitioner No.1 was born on 6th June 1908 and was admitted in Raigad Z.P. primary school Zirad on 15th June 1915. His caste was recorded as Dongar Koli on 11th June 1915. It is the case of petitioners that the caste of some of their relatives has been recorded as Son Koli. However, Gopal Shiva Bhoir who is real brother of grand father of petitioner No.2 and Krishna Vithoba Bhoir who is father of petitioner No.1 have been shown in the school records referred to above as belonging to Dongar Koli.

5. Petitioners contend that on the basis of aforesaid documents, they applied to respondent

No.2 committee for scrutiny and verification of their caste claim. They also furnished other documentary evidence. The certificates pertaining to their blood relatives from paternal side also came to be forwarded. It was also contended that respondent No.2 committee granted certificates of validity on 6th December 2000 to one Manisha Dattatray Bhoir and Sandip Pandurang Bhoir, after adjudicating their caste claims. These certificates of validity evidence their tribe being Mahadeo Koli. It was pointed out to the committee that Sandip Bhoir is paternal cousin brother of petitioner No.1 and uncle of petitioner No.2. The real sister of Sandip, Malti Bhoir was also granted caste certificate by respondent No.2. It is petitioners case that another cousin brother of petitioner No.1 and uncle of petitioner No.2 Dasharath Bhoir was also granted caste validity certificate by respondent No.2. Petitioners also relied upon school leaving certificate of Laxman Bhoir, uncle of petitioner No.1 and grand father (cousin) of petitioner No.2, showing his caste as Dongar Koli. This certificate is dated 4th December 1934. An affidavit setting out family tree was

also filed by petitioners.

6. It is contended that police inspector of vigilence cell conducted detailed home and field enquiry. He submitted a report to respondent No.2. A copy of the said report was forwarded to petitioners so as to enable them to file their reply. Petitioners invited our attention to the remarks of research officer, vigilance cell on the report. Petitioners also filed detailed reply with regard to caste entries of Sakharam Bhoir, Gangaram Bhoir, Laxman and Vithoba Bhoir. Petitioners after filing all the aforesaid documents and repy prayed to the scrutiny committee to issue caste validity certificate in their favour.

7. However, it is the grievance of petitioners that the caste scrutiny committee invalidated and rejected their caste claim by the impugned order. Aggrieved by this action, present petition is instituted by them.

8. We have heard Mr.Mendadkar, learned Counsel appearing for petitioners and

Mr.Sonawane, learned A.G.P. We find substance in the complaint of Mr.Mendadkar that the scrutiny committee has invalidated caste claim without adverting to relevant material and on unsustainable grounds. A perusal of the scrutiny committee's order reveals that scrutiny committee has been influenced to a great extent by the fact that after issuance of caste validity certificate in favour of Nitin Bhoir who is brother of present petitioners, vigilance cell has obtained contra material as a result of which a show cause notice has been issued by it. It is on this ground alone that the scrutiny committee concludes that no reliance can be placed on the validity certificates issued in favour of Sandip Bhoir and Malti Bhoir. Although, the scrutiny committee has observed that majority entries are Koli and Sonkoli and therefore, the claim of the petitioners towards Mahadeo Koli tribe cannot be accepted. In our view, the conclusion of the scrutiny committee is based on the alleged contra material obtained by vigilance cell.

9. The geniology and family tree is not disputed. On the other hand perusal of affidavit

of Vitthal Thombre, Senior Research Officer working with respondent No.2 committee filed in answer to this petition discloses that the scrutiny committee had before it school entries in respect of Gopal Shiva Bhoir, Krishna Vithoba and Laxman Bhoir as Dongar Koli. Yet, scrutiny committee proceeds to brush them aside in preference to school entries pertaining to Waman Hari and Shankar Shiva showing as Koli. This course is adopted for the reason that entries pertaining to Waman and Shankar are oldest and have great probative value.

10. We are unable to appreciate this line of reasoning. Three school entries referred to above of Gopal, Krishna and Vithoba as Dongar Kolis are also during the period 1915 to 1938. They are also admittedly older entries. These entries are not disbelieved or discarded. There is no reason to doubt their genuineness and varacity. When on the basis of such material caste certificate has been issued in favour of Sandip and Dasharath Bhoir, then for what reason these entries have been discarded only qua the petitioners, is not clear to us at all. The

reason that now contra material has been obtained in case of Nitin is also not of any relevance in the light of the aforementioned factual position. Equally untenable is the conclusion that petitioners have not proved their authenticity towards Dongar Koli scheduled tribe. Affidavit filed by the Research Officer in paras 6 and 7 admits the fact of enquiry and report of vigilance cell. However, reliance is placed on that part of the report where it is purportedly indicated that inspection of school admission register demonstrates that out of nine school entries only three entries are Dongar Koli and others are Son Koli. It appears that out of these entries oldest entry is picked up and since it is "Koli" it has been assumed that its probative value is more than other entries of Dongar Koli. In our view, when admittedly three school entries pertaining to close relatives of petitioners are Dongar Koli and these are also documents of great probative value being issued prior to the Presidential Order, the conclusion of scrutiny committee is unsustainable.

11. The scrutiny committee ought to have in

the present facts and circumstances accepted the claim of petitioners and issued validity certificates in their favour. Since we have scanned the entire material with the assistance of learned Counsel and as the committee has rejected the request of validity certificate only on the grounds indicated above, no purpose will be served by remitting the matter back to the scrutiny committee. In the peculiar facts and circumstances, when close blood relations have been issued validity certificate by the same committee, no useful purpose will be served by such a course. We are satisfied that the petitioners have proved their claim towards Mahadeo Koli scheduled Tribe and are entitled to the certificate of validity in their favour.

12. In the result, the order of scrutiny committee dated 19th July 2004 (Exh.A) is quashed and set aside. Rule is made absolute in terms of prayer clause (a). The scrutiny committee to issue caste validity certificates in favour of petitioners within a period of eight weeks from today. In the circumstances, there will be no order as to costs.

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